(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No.569/2004

CORAM: Hon'ble Shri S.R. Nayak, Chief Justice &
Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant Non-Applicant No.3	:	United India Insurance Company Limited Through : Its Divisional Manager - Divisional Office - Main Road Korba, District Korba (C.G.)
		Versus
Respondent No.1 (Applicant No.1)	:	1. Anita W/o Late Ram Chandra, ated 22 years.
Respondent no.2 No.2	:	2. Kusum, D/o Late (APPLICANT Ramchandra, aged 5 month (Through Guardian-ad-litem-Mother-Anita Resp. no.1)
Respondent No.3 (Applicant No.3)	:	3. Kalia Ram, S/o Bechuram, aged 50 years.
Respondent No.4 (Applicant No.4)	:	4. Putari, W/o. kaliaram, aged 45 years.
		Respondent No.1 to 4 all are resident of Village Jori, P.S. Dhourpur, District Surguja, Ambikapur (C.G.)
Respondent No.5 (Non-Applicant No.1)	:	5. Jagdish Prasad, S/o Shri Bukhan Sahu, aged 45 years.
Respondent No.6 (Non-Applicant No.2)	:	6. Suraja @ Suraj Kumar, S/o Somar Sai, aged 28 years,
		Respondent No.5 & 6 are resident of Village Jora, P.S. Dharpur, District Surguja, Ambikapur (C.G.)

Shri Dashrath Gupta, Counsel for the appellant.
Shri Manoj Mishra, Counsel for the respondents No.1 to 4.
Shri Bhupendra Singh, Counsel for the respondents No.5 & 6.

ORAL ORDER
(Passed on 3.5.2006)

The following oral order of the Court was passed by **S. R. Nayak, C.J.**

This appeal preferred by the Insurance-Company is directed against the award dated 26.2.2004 passed by the 1st Additional Motor Accidents Claims Tribunal (for short the M.A.C.T.) in Claim Case No.37/2003. By the impugned award, the M.A.C.T. has awarded total compensation of Rs.4,28,000/- with interest at the rate of 9% per annum from the date of claim petition till payment, to the respondents-claimants.

2. The only contention urged before us by the learned standing counsel for the Insurance-Company is that the deceased Ram Chandra was travelling in the tractor trolley as a passenger for fair when accident took place, and therefore, the M.A.C.T. ought not to have fastened the liability to pay compensation on the Insurance-Company for the breach of terms and conditions of the insurance policy. It is true that that plea was raised in the written statement filed by the Insurance-Company before the M.A.C.T. Having taken that plea, it was the onus of the Insurance-Company to adduce evidence to substantiate that plea. The Insurance-Company, to substantiate that plea, examined Shri Anup Mehta, a private investigator appointed by the Insurance Company, as N.A.W.1. We have perused his evidence. It is true that, in his evidence, it is stated that in the investigation conducted by him after the accident, he came to know that the deceased Ram Chandra was travelling as a passenger for fair in the tractor trolley at the time of accident. However, in his cross-examination it was suggested to him by the learned counsel for the claimants that his above version was not true.

3. In the course of argument, learned counsel for the Insurance-Company would draw our attention to what is elicited in the cross-

examination of Kayilaram A.W.2. in paragraph 6 of the evidence, A.W.2 is one of the claimants and father of the deceased Ram Chandra. Paragraph6 of the deposition contains contradictory statements. In the first part of it, A.W.2 has categorically stated that the deceased-Ram Chandra was not a member of the marriage party of one Sukhdeo. However, in the second part of it, it is elicited that the deceased was travelling as member of the marriage party in the tractor which met with accident. The two statements are contrary to each other. If that part of the evidence is eschewed, there is absolutely no independent evidence adduced by the Insurance Company to substantiate plea that the deceased was travelling in the vehicle involved in the accident as a passenger for fair. It is also relevant to note that the owner of the tractor-Jagdish Prasad was examined as N.A.W.1. He, in his evidence in paragraph-7, has categorically stated that the tractor was not being used to carry the marriage party of Sukhdeo for fair. The evidence of the owner of the vehicle fully supports the evidence of A.W.2 given in examination-in-chief. Having regard to the state of evidence on record, it cannot be said that the view taken by the M.A.C.T. is not one of the plausible views.

4. In the result, the appeal is dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb
Deshmukh
Judge